

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:95 CR 397
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
BYRON LEWIS,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Defendant.)	

This matter comes before the Court upon Defendant, Byron Lewis' Motion seeking a reduction in his sentence based on changes to the sentencing guidelines that may affect sentences stemming from crack cocaine convictions. (ECF #215) Mr. Lewis previously sought a reduction of sentence on exactly the same grounds and that motion was denied because his sentence was based on a statutory mandatory minimum sentence and could not be lowered even if a two point reduction was otherwise applicable. That decision was affirmed by the Sixth Circuit Court of Appeals. (ECF # 213). There have been no changes or alterations to the laws affecting sentence reductions under 18 U.S.C. § 3582(c)(2). Therefore, Mr. Lewis' motion is again denied.

The Fair Sentencing Act of 2010 was passed into law on August 3, 2010, in part changing the penalties associated with convictions relating to the distribution of crack cocaine. The Act was not made retroactive at that time. Pursuant to a June 30, 2011 decision by the United States Sentencing Commission, U.S.S.G. § 2D1.1 as amended, the Fair Sentencing Act will become retroactive effective November 1, 2011, assuming Congress approves the

Guidelines Amendment.

Pursuant to 18 U.S.C. § 3006A, the Public Defender's Office has filed a petition for appointment in this case, on behalf of Mr. Lewis, to assist him in determining whether he is eligible for a sentence reduction under U.S.S.G. § 2D1.1. (ECF #217). It is the Court's understanding that this inmate is not currently represented by private counsel and that he is not presently able to hire private counsel for this purpose. Therefore, this motion is GRANTED. The Court hereby appoints the Office of the Federal Public Defender to advise Mr. Gray in determining his eligibility for a sentence reduction pursuant U.S.S.G. § 2D1.1, and to assist him in preparing a future motion for reduction of sentence if he is deemed eligible after the Guidelines Amendment become retroactive. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: July 13, 2011